

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Wometco Cable TV of Georgia, Inc. CUID No. GA0222
Duluth, Georgia

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 1995;

Released: March 27, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider complaints about the price Wometco Cable TV of Georgia, Inc. ("Operator") was charging for cable service in Duluth, Georgia, CUID No. GA0222. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393.

2. Under the Cable Television Consumer Protection and Competition Act of 1992,¹ and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review a cable operator's prices for its cable programming service ("CPS") tier upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.² Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.³ In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.⁴

3. The Commission's original rate regulations took effect on September 1, 1993.⁵ The Commission subsequently revised its rate regulations effective May 15, 1994.⁶ Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.⁷ Operators attempting to jus-

tify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.⁸ Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.⁹

4. The complaints filed against Operator for the community designated by the above-listed CUID number state that they are being filed to object to a rate increase for the CPS tier offered by Operator. Under the Commission's rules, a complaint regarding a rate change for the CPS tier may be filed within 45 days from the date the complainant first receives a bill reflecting the rate change.¹⁰ However, after reviewing the record in this case, we have determined that these complaints do not relate to changes in Operator's regulated CPS rates. Rather, the complaints object to changes in Operator's rates for basic tier service, associated equipment charges for receiving basic tier service, and a la carte packages that are not subject to rate regulation. The Commission is responsible for, and its jurisdiction is limited to, regulating rates for cable programming services.¹¹ Accordingly, we find that we are without jurisdiction to consider the complaints discussed herein and shall dismiss them.

5. As of September 1, 1993, Operator offered subscribers a basic service tier, a CPS tier, and an a la carte package in the community addressed herein. Prior to September 1, 1993, Operator removed three channels from previously regulated tiers into an a la carte package. At the same time, Operator replaced these channels on the regulated tiers with new channels. Operator did not change its price for the preexisting CPS tier. Therefore, there was no change in the rate charged for the CPS tier that could constitute the basis for a valid complaint.

6. To the extent that these complaints object to changes in the rate charged for the basic tier and associated equipment, we lack jurisdiction to consider those complaints. Except in limited circumstances, the Commission does not act upon complaints concerning rates for that tier. When only basic rates are being challenged, the complaint should properly be brought to the attention of the local franchising authority in the first instance, and not filed with this Commission.

7. As for Operator's a la carte package, we note that the Cable Services Bureau has released orders resolving letters of inquiry ("LOIs") regarding other, similarly structured systems.¹² Relying on the Commission's *Going Forward Order*,¹³ the Bureau's orders addressed the restructured service offerings implemented beginning September 1,

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), as amended, 47 U.S.C. § 543(c) (1993).

² 47 C.F.R. § 76.956.

³ 47 C.F.R. § 76.956(b).

⁴ *Id.*

⁵ Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

⁶ See Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) ("Second Order on Reconsideration") at 4119; 47 C.F.R. § 76.922(b).

⁷ See Second Order on Reconsideration at 4190, paras. 150-152.

⁸ *Id.*

⁹ 47 C.F.R. § 76.922(b)(6); see also Second Order on Reconsideration at 4189 n.195.

¹⁰ 47 C.F.R. § 76.953(b). Complaints about rates in effect on September 1, 1993 must be filed by February 28, 1994. 47 C.F.R. § 76.953(a). Each of the complaints addressed in this Order was filed after February 28, 1994.

¹¹ See 47 U.S.C. § 522.

¹² See, e.g., Cablevision Industries, Wake Forest, North Carolina, LOI 94-7, DA 94-1550 (Cab. Serv. Bur., released Dec. 22, 1994); Comcast Cablevision, City of Tallahassee, Florida, LOI 93-2, DA 94-1275 (Cab. Serv. Bur., released Nov. 18, 1994).

¹³ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, MM Docket Nos. 92-266 and 93-215, FCC 94-286, ¶ 51 (adopted November 10, 1994).

1993, in which operators eliminated or cut back CPS tiers and offered a la carte channels. In the orders that present fact patterns most similar to Operator's here, the Bureau found that the restructured service offerings do not constitute a clear evasion of our rate rules. With regard to the channels moved to a la carte packages, the orders permit the operator to treat its a la carte packages as new product tiers that may be priced at market levels under the *Going Forward Order*.¹⁴ We feel that we have sufficient information regarding Operator's restructured offerings in the subject communities to conclude, in accord with the *Going Forward Order*, that they should be treated the same way. As in the communities in the cited orders, the small number of channels that were offered in the a la carte packages did not constitute an evasion of our then existing rules. Therefore, consistent with the action taken in the LOI orders, we will allow Operator to treat its a la carte packages in the subject communities as new product tiers even though they would not qualify as new product tiers under the *Going Forward Order* because one of the conditions for a new product tier is that channels may not be removed from a basic service tier or a CPS tier.

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by the Operator in the community referenced above ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief
Cable Services Bureau

¹⁴ See, e.g., Century Cable Television, Memorandum Opinion and Order, DA 94-1627 (Cab. Serv. Bur. released Jan. 3, 1995), at para. 5-6.